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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,178	12/28/2001	Jean-Michel Lerdu	Hamelin *3	7318

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EXAMINER

SCHIFFMAN, JORI

ART UNIT PAPER NUMBER

3677

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/033,178

Applicant(s)

LERDU, JEAN-MICHEL

Examiner

Jori R. Schiffman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lauzier (US 3955799).

Regarding claims 1 and 12, Lauzier discloses a fence comprising an upper horizontal rail 11, a lower horizontal rail 2, boards 3 extending between rails, at least one of the rails having separate half parts (4, 10), each of the parts including a complimentary part of cooperating fastener (8, and the outside legs of 10) for securing parts together about the boards, at least one of the parts having longitudinally spaced ribs 5 and 8, the ribs extending in the same direction, each adjacent pair of ribs defining a space therebetween, and a board fitted into a space with the parts secured together about the boards.

As to claim 6, Lauzier discloses both rails (1, 2) having separate half parts (4, 10) and (4, 11), with at least one of the parts of each rail having longitudinally spaced ribs 5.

In regards to claim 13, Lazier discloses the complimentary parts of the fastener being capable of being slidingly engageable in one direction for mechanically preventing disengagement in the opposite direction.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lauzier (US 3955799) as applied to claim 1 above, and further in view of Taylor (US 4962914).

Regarding claim 2, Lauzier discloses the claimed fence except for both parts having longitudinally spaced ribs, the ribs on one of the parts being opposed to the ribs of the other part. Taylor teaches that it is well known for a fence to have boards 14 extend completely through the bottom rail 13. It would have been obvious at the time the invention was made to a person of ordinary skill in the art to extend the boards 3 of Lauzier completely through the bottom rail (4, 11) as disclosed in Taylor for increased support to the boards 3, and once the combination is made both opposing half parts of the rail would have longitudinally spaced ribs 5, 8 on the top part and ribs 5 and the ribs located at the top of the bottom part (not labeled in the Figure) to hold the board in place for greater stability of the fence.

As to claim 3, Lauzier as modified by Taylor discloses the claimed fence except for the fence having a first vertical post extending transversely relative to the rails, the rails engaging the first post. Taylor teaches a first post 10 extending transversely relative to rails 12 and 13. It would have been obvious at the time

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the invention was made to a person of ordinary skill in the art to include a first vertical post extending transversely to the rails in Lauzier as disclosed in Taylor so the fence is secured into the ground, which will increase the stability of the fence.

Referring to claim 4, Lauzier as modified by Taylor discloses a second vertical post 11 extending transversely relative to the rails.

5. Claims 5, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lauzier (US 3955799) in view of Taylor (US 4962914) as applied to claim 4 above, and further in view of Grimm et al. (US 4421302).

As to claims 5, 10, and 11, Lauzier as modified by Taylor discloses the claimed fence except for the each fence post fitting between the opposing half parts of each of the rails and the lower rail carrying the posts and boards. Grimm teaches a fence with each post 14 fitting between opposing half parts 25, 26 and 35, 36 of rails 24 and 34, respectively. Grimm further discloses the lower rail 34 carrying the post 14 and boards 46. It would have been obvious at the time the invention was made to a person of ordinary skill in the art to construct the posts of modified Lauzier so that they fit between opposing half parts of the rails and so the lower rail carries the posts and boards as disclosed in Grimm for a professional finished appearance of the fence.

6. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lauzier (US 3955799) in view of Taylor (US 4962914) as applied to claims 1 and 4 above, and further in view of Weaver, III (US 4953830).

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Regarding claim 7, Lauzier as modified by Taylor discloses the claimed fence except for a third horizontal rail located above the upper horizontal rail. Applicant is reminded that duplicating the components of a prior art device, as taught by Weaver, is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). It would have been obvious at the time the invention was made to a person of ordinary skill in the art to include a third horizontal rail in the fence of modified Lauzier since it is well known in the art.

As to claims 8 and 9, since the third rail will be a duplication of the other two, Lauzier as modified by Taylor and Weaver discloses the third rail having separate half parts, each of the parts having cooperating fasteners for securing the parts together, and at least one of the parts including longitudinally spaced ribs, each adjacent pair of ribs defining a space therebetween, a board fitted into the space.

7. Claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michael et al. (US 6231031) in view of Lauzier (US 3955799).

Regarding claims 12-17, Michael discloses a fence (Fig. 5) comprising an upper horizontal rail (upper 44, 46), a lower horizontal rail (lower 44, 46), and boards 22 extending between the rails, at least one of the rails divided into two vertically opposing half parts 44, 46. Michael fails to disclose each part including a complimentary portion of a fastener for securing the parts together about opposite sides of a board, and one of the parts including a plurality of longitudinally spaced, transverse ribs extending toward the other of the parts, the

opposing parts and each adjacent pair of ribs defining a space therebetween into which a board is fitted when the parts are secured together. Using fasteners to hold together parts of a fence is well known in the art of fencing. Lauzier teaches each of the parts (4, 10) of a horizontal rail 1 including a complimentary part of a cooperating fastener (8, and the outside legs of 10) for securing parts together about the boards, at least one of the parts having longitudinally spaced, transverse ribs 5 and 8, the ribs extending in the same direction, each adjacent pair of ribs defining a space therebetween, and a board fitted into a space with the parts secured together about the boards. It would have been obvious at the time the invention was made to a person of ordinary skill in the art to include a complimentary part of a cooperating fastener on each part of the rail, as well as at least one of the parts having longitudinally spaced, transverse ribs in Michael's rail as disclosed in Lauzier to create a more secure connection of the rail to the boards so they are less likely to come apart.

Response to Arguments

8. Applicant argues that the parts in Lauzier are not "half parts" because they are not mirror images of each other. In response, the Examiner respectfully disagrees because according to Merriam-Webster's Collegiate Dictionary Tenth Edition, the definition of "half" is "one of a pair". Parts 4 and 10 are two parts that, together, make up rail 1. Therefore, the two parts 4 and 10 in Lauzier are appropriately considered to be "half parts" of the rail and the rejection is maintained. The examiner suggests applicant more

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clearly define the term "half part" in the claims by adding structural language, such as "mirror images of each other".

9. Applicant argues that item 5 in Lauzier is an opening or perforation, not a rib.

The Examiner would like to clarify that the rib is considered to be the slight protrusion on the side of the opening. These, along with rib 8, are the pair of ribs that are longitudinally spaced and extend in the same direction.

10. Applicant argues that Taylor fails to disclose each half part having opposed ribs.

The Examiner would like to point out that if the board is extended through the rail, then the bottom half part will also have openings with ribs 5, and those along with the ribs already present on the bottom half are the plurality of ribs on each half part.

11. Applicant argues that in order to sandwich the posts between the half parts of Lauzier, the rail would be required to be oriented horizontally. The Examiner agrees, which is why Grimm was used to teach that orientation being well-known in the art. The rejection is deemed proper and is maintained.

Conclusion

12. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jori R. Schiffman whose telephone number is 703-305-4805. The examiner can normally be reached on M-Th, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jori R. Schiffman
Examiner
Art Unit 3677

JS


John Cottingham
Primary Examiner